

ISSUE

Under the circumstances described below, is a university's leasing of its stadium to a professional football team unrelated trade or business under section 513 of the Internal Revenue Code and, if so, is income from this activity excluded from unrelated business taxable income as rent from real property under section 512(b)(3)?

FACTS

The university is exempt from federal income tax under section 501(c)(3) of the Code, and has been classified as an educational organization described in section 170(b)(1)(A)(ii). The university's facilities include a stadium, which it uses in its physical education program and intramural and intercollegiate sports program. In addition to the stadium's use in connection with the university's educational activities, for a fixed fee, the university permits a professional football team to use the stadium for practice during several months of the year. Under a lease agreement, in addition to heat, light, and water, the university is responsible for maintaining the playing surface and all other grounds maintenance. It also provides dressing room, linen, and stadium security services for the professional team. Security services include crowd and traffic control, guarding the stadium and maintaining the privacy of practice sessions.

LAW

Section 511 of the Code imposes a tax on the unrelated business taxable income of organizations exempt under section 501(c)(3).

Section 512(a) of the Code defines 'unrelated business taxable income' as the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less certain deductions, but with modifications provided in section 512(b). For purposes of determining unrelated business taxable income, section 512(b)(3) excludes rents from real property.

Section 513(a) of the Code defines 'unrelated trade or business' of an exempt organization as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501.

Section 513(c) of the Code provides that the term 'trade or business' includes any activity which is carried on for the

production of income from the sale of goods or the performance of services.

Section 1.512(b)-1(c)(5) of the Income Tax Regulations provides that rents from real property, for purposes of the exclusion from unrelated business taxable income, do not include payments for the use or occupancy of rooms or other space where services are also rendered to the occupant, such as for the use or occupancy of rooms in hotels, boarding houses, or apartment houses furnishing hotel services, or for the use or occupancy of space in parking lots or warehouses. Generally, services are considered rendered to the occupant if they are for his or her convenience and are not those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The regulation further provides that supplying maid service constitutes such service, whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies, and the collection of trash, are not considered services rendered to the occupant.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is 'related' to exempt purposes, in the relevant sense, only when the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income); and it is 'substantially related,' for purposes of section 513 of the Code only if the causal relationship is a substantial one. Section 1.513-1(d)(2) further provides that for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Rev. Rul. 76-402, 1976-2 C.B. 177, considered an exempt school that provides tennis courts, furnished dormitory rooms, linens, maid service, meals, and dining facilities to an individual for use by the individual in conducting a summer tennis camp. Rev. Rul. 76-402 assumed that the income was taxable as income from an unrelated trade or business under section 513 of the Code and was not excludable from unrelated business taxable income under section 512(b)(3) and section 1.512(b)-1(c)(5) of the regulations as rent from real property.

ANALYSIS AND HOLDINGS

In this case, by leasing its stadium in the manner described, the university is performing services for the production of income, which constitutes a trade or business under section 513(c) of the Code. Since the university leases its stadium during several months of the year, it is engaging in a trade or business regularly carried on within the meaning of section 512. The exempt purposes of the university are limited

to those involving the advancement of education. Leasing a stadium to a professional football team in the manner described is not an activity that furthers the educational purposes of a university. Thus, this activity does not have a substantial causal relationship to the achievement of the university's exempt purposes, as required by section 1.513-1(d)(2) of the regulations. Accordingly, the university's leasing of its stadium is unrelated trade or business under section 513.

Additionally, providing extensive grounds and playing field maintenance, dressing room linens, and stadium and dressing rooms, pursuant to the lease, the university, like the school in Rev. Rul. 76-402, is furnishing substantial services for the convenience of the lessee that go beyond those usually rendered in connection with the rental of space for occupancy only. Accordingly, income from the university's leasing of its stadium to a professional football team is not excluded from unrelated business taxable income as rent from real property under section 512(b)(3) of the Code and section 1.512(b)-1(c)(5) of the regulations.

See Rev. Rul. 76-402, for another example of the computation of unrelated business taxable income where amounts are from dual use of facilities and personnel.